IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1293 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant
Versus
DHANLAXMIBEN WD/0 DADUBHAI RAVALJIBHAI VASAVA & 7-Defendants

==========

Appearance :

MR.M.D. PANDYA for Appellant,

MR.M.T.M. HAKIM for Defendants No.1 – 7,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 04/12/2006

ORAL JUDGMENT

The Gujarat State Road Transport Corporation has filed this appeal under the Provisions of Section 110

(D) of the Motor Vehicles Act (hereinafter referred to as the **'Act'**) against the judgment and award made by the Motor Accident Claims Tribunal (Main) Bharuch in Motor Accident Claim Petition No.85 of 1984 dated 30th October, 1986. By the said award, the Tribunal has granted compensation to the respondents of Rs.95,000/- with interest at the rate of 6 per cent per annum from the date of petition till the date of realization and the proportionate cost.

1.1 The claim petition was filed by the present respondents No.1 to 7 (hereinafter referred to as the **'claimants'**) to obtain compensation of Rs.1,00,000/- for the death of one Dadubhai Ravjibhai Vasava, the husband of the original claimant No.1 and father of claimant Nos.2 to 6. The accident took place on 28th February, 1984 at about 11:30 a.m. On that day, a bus belonging to the appellant bearing Registration No.GRR 8818 which was driven by respondent No.8 knocked down the deceased causing him fatal injuries. It is the say of the claimant that respondent No.8 drove the bus in rash and negligent manner and also on the wrong side of the road whereby it dashed with

the deceased causing his instantaneous death. The claimants, therefore, preferred the aforesaid Motor Accident Claim Petition under the Provisions of the Act. The claim was resisted by the appellant by filing written statement at Exh.10. In the written statement all the allegations levelled against respondent No.8 were denied and it was contended that since there was no negligence on the part of respondent No.8, the claimants were not entitled to receive compensation.

1.2 At the trial, the parties led evidence oral as well as documentary. On the basis of the material produced before it, the Tribunal came to a conclusion that the accident occurred solely due to the rash and negligent act of respondent No.8. The Tribunal also assessed the compensation which could be paid to the claimant at Rs.95,000/- and passed the appropriate award. Hence, this appeal.

2. Ms.Maya S. Desai, learned Advocate appearing for the appellant has taken me through the record and proceedings of the case and in particular the

judgment of the Tribunal, as well as, the oral evidence adduced by the parties. She has submitted that merely because no plea of contributory negligence is raised in the pleadings by the appellant, the Tribunal cannot ignore that aspect of the case and hold respondent No.8 solely liable for the accident. She has further contended that the deceased after getting down from the truck, was trying to cross the road and he was hit by the bus. According to her the deceased should have exercised due care while crossing the road, that has not been done. Therefore, he is also responsible for the accident. According to her the award amount is on higher side and it is required to be reduced.

2.1 Having carefully gone through the record and proceedings of the case and having considered submissions of Ms.Desai, there is no dispute that the accident took place on 28th February, 1984 at 11:30 a.m.; there is also no dispute that bus belonging to the appellant was involved in the accident; it is also not disputed that because of the injury received by the deceased in this accident he died. The first

question that is required to be decided by me is whether there was any negligence on part of the deceased so as to contribute to the accident. So far the claimants are concerned, no eye-witness has been examined. Dhanlaxmiben Dadubhai is the widow of the deceased. Her evidence is at Exh.37. It clearly shows that she is not an eye-witness to the incident. She has not examined any other witness who has seen the incident. Hemantkumar Bhupenchand Shah, has been examined on behalf of appellant and his evidence is at Exh.55. He is the driver of the offending vehicle. According to him he had started around 10:15 a.m. from Jambusar to go to Rajpipla with the bus. He left the Bus Depot at Bharuch around 11:30 a.m. When the bus reached village, Gamkunva he saw one truck standing near Gamkunva Bus Stand facing Rajpipla. He was also proceeding in the same direction. He has stated that he saw passengers climbing down and also climbing up the stationary truck. According to him while he was trying to overtake the stationary truck, one person got down from the truck and when that person was about to cross the road he dashed with the rear side of the

bus. In the cross-examination this witness has stated that he had seen the truck for the first time from a distance of about 52 to 100 feet. He has further stated that because of the curvature at that place he had not seen the truck from distance. He has also stated that one person was trying to cross the road from behind the truck. However, he dashed with the rear side of the bus. According to him at the point of overtaking the truck, the distance between the truck and his bus was of 1 foot. He has denied the suggestion that while the deceased was trying to board the truck, the accident took place. Apart from the oral evidence of respondent No.8, there is Panchnama of the offending vehicle, as well as, the scene of occurrence. The width of the road at that place is about 24 feet. The offending bus was found to be standing on the extreme right side of the road and it was facing Rajpipla. This would be its wrong side. Near the right side of the headlight a dent was found and blood stains were also noticed. These facts are reflected from the Panchnama. In view of this, it is difficult to follow the version of respondent No.8. If the deceased was trying to cross

the road from the rear side of the truck, he would have certainly noticed him. He has stated that when the bus had almost overtaken the truck, the deceased dashed with the bus on rear side. If he had already overtaken the truck, he would not have noticed the deceased crossing the road from the backside of the truck. Further, the Panchnama belies his story. The dent is found on the right side of the truck and so also the blood stains, meaning thereby the deceased was knocked down while he was standing near the southern edge of the road which would the extreme wrong side of the bus. It is, therefore, obvious that respondent No.8 drove the vehicle in negligent and rash manner causing the accident. There does not appear to be any contributory negligence on the part of the deceased. The negligence appears to be that of respondent No.8 alone. I, therefore, do not find any error having been committed by the Tribunal while deciding the issue of negligence.

2.2 Ms.Desai, learned Advocate for the appellant has made feeble attempt to challenge the quantum of compensation. I have carefully perused the discussion

made on this aspect. The deceased was aged about 35 years. He was an agriculturist. Evidence of Dhanlaxmiben Dadubhai, Exh.37 shows that the deceased and his father owned about 15 acres of land. They produced crop worth Rs.1000/- to Rs.1,500/- per acre. She has also stated about the expenses incurred by her for the funeral and obsequial ceremonies of the deceased. The Tribunal has determined the loss of dependency benefits at Rs.500/- per month after considering the various relevant factors. The Tribunal has also held that so far as the deceased is concerned, he owned separate land. This finding has been given on the basis of Exhibits 27 to 32. Some lands were jointly held by him with his father. The Tribunal has applied multiplier of 15 years. Thus, considering the age of the deceased, multiplier of 15 cannot be said to be on higher side. The Tribunal has, however, applied the multiplier of 5 years vis-a-vis father of the deceased, since at that time he was aged of 75 years. The Tribunal has in paragraph 18 of its judgment in a tabular form has considered the loss of dependency benefit in respect of each of the claimants, as also, the amount of loss of

expectation of life. It has also awarded Rs.1,000/- towards the expenses. Thus, in all the Tribunal has awarded Rs.95,000/-.

3. In my opinion, this amount can certainly be termed as just compensation and on this count also no interference is required by this Court.

4. In the result, this appeal is dismissed with cost.

(AKSHAY H. MEHTA, J.)

sompura